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No. 88-

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1988

DOROTHY WILLNER,

Petitioner,

vs.

UNIVERSITY OF KANSAS, GENE BUDIG, ARCHIE R. DYKES, DELBERT M. SHANKEL, FRANCES D. HOROWITZ, ROBERT P. COBB, DEANELL TACHA, ROBERT L. LINEBERRY, ROBERT S. HOFFMAN, ROBERT J. SQUIER, ANTA MONTET-WHITE, ALFRED E. JOHNSON, MICHAEL CRAWFORD, JOHN M. JANZEN, F. ALLAN HANSON, FELIX MOOS, DAVID FRAYER, ROBERT J. SMITH, DONALD STULL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

1. Is a District Court Judge obligated to disqualify himself under 28 U.S.C. § 455 in an action against a university of which he was (1) a director of the Alumni Association, (2) President of the Board of Governors of its Law School during the pendency of the action in his court, and (3) a director of the university's Endowment Association?

2. May Courts of Appeals or District Courts read into 28 U.S.C. § 455 a timeliness requirement which Congress deliberately refrained from including in the statute?

3. Does a Court of Appeals abuse its discretion by authorizing dismissal under F.R.Civ.P. 37 in violation of the First Amendment right to freedom of religion and in direct conflict with decisions of this Court?

   (Note: Petitioner reserves the right to argue Questions 4 and 5 in the event certiorari is granted on any of the above questions, but does not include Questions 4 and 5 among the reasons for the grant of certiorari).

4. Do pervasive bias and prejudice in comments and rulings constitute bias against a party sufficient to disqualify a judge?

5. Does a federal court of appeals abuse its discretion in authorizing, in conflict with the applicable decision of this Court in *Hughes v. Rowe*, 449 U.S. 5, 101 S.Ct. 173, 66 L.Ed.2d (1980), a district court's award of attorneys' fees to prevailing defendants in a civil rights action brought by a pro se plaintiff?

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner Dorothy Willner respectfully prays that a writ of certiorari issue to review the judgments and opinions of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled proceeding on June 1, 1988.

OPINIONS BELOW

The opinions of the Court of Appeals for the Tenth Circuit are reported at 848 F.2d 1023 and 848 F.2d 1032 and are reprinted in the appendix hereto, p. A1, *infra,* and p. A18, *infra.*

The memorandum decisions of the United States District Court for the District of Kansas (Rogers, D.J., Saffels, D.J.) have not been reported. They are reprinted in the appendix hereto, p. A26, *infra;* p. A30, *infra;* p. A34, *infra;* p. A68, *infra;* p. A82, *infra;* and p. A88, *infra.*

JURISDICTION

The United States District Court for the District of Kansas had jurisdiction of the claims under 42 U.S.C. §§ 1981, 1983, 1985, 1986, 1988, 2000e, *et seq.* (Title VII); 28 U.S.C. §§ 1331, 1337, 1343; the Equal Pay Act of 1963, 29 U.S.C. § 206(d); Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.;* the First, Fifth and Fourteenth Amendments of the Constitution, except to the extent that issues herein may operate to remove jurisdiction. On October 15, 1984, the District Court dismissed individual respondents Dykes, Shankel, Horowitz, Cobb, Hoffman, Squier, Montet-White, Moos, Janzen, Crawford, Frayer, Stull. See p. A26, *infra.* On December 6, 1984, the District Court ruled that this dismissal was not a final judgment. See p. A30, *infra.* On September 16, 1986, the District Court found for the respondent University of Kansas. See p. A34, *infra.* On January 6, 1987, the District Court granted respondents Budig's, Tacha's, Lineberry's, Johnson's, Hanson's and

Smith's motion for summary judgment on petitioner's claim under 42 U.S.C. § 1983. See p. A68, *infra*. On February 10, 1987, the District Court granted these respondents' motion for summary judgment on petitioner's remaining claims against these defendants. See p. A82, *infra*. On April 29, 1987, the District Court granted these respondents' application for attorneys' fees. See p. A88, *infra*.

On petitioner's appeals, the Tenth Circuit on June 1, 1988, entered judgments and opinions affirming. See p. A1, *infra* and p. A18, *infra*. The Court of Appeals denied timely petitions for rehearing on August 18, 1988, and entered them on August 19, 1988. See p. A92, *infra;* p. A93, *infra;* p. A94, *infra;* and p. A95, *infra*.

The jurisdiction of this Court to review the judgments of the Tenth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

28 U.S.C. § 455 provides in pertinent part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> > (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> * * *

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

* * *

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

* * *

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

F.R.Civ.P. 37(b) provides in pertinent part:

(2) *Sanctions by Court in which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit

discovery, including an order made under subdivision (a) of this rule . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others are the following:

* * *

(C) An order striking out pleadings or parts thereof, of staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

* * *

STATEMENT OF THE CASE

Petitioner has been a faculty member of the University of Kansas in anthropology since 1966, first as an associate professor of anthropology and, since 1970, as a full professor. Petitioner filed suit by counsel in the United States District Court for Kansas (Rogers, D.J.) on December 1, 1982, pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1986, 2000e, *et seq.* (Title VII); 29 U.S.C. § 206(d), the Equal Pay Act; Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.*; and the First, Fifth and Fourteenth Amendments, on the basis of an EEOC determination of reasonable cause which stated:

> In May 1977, Charging Party did protest an action which she felt violated appropriate civil rights statutes and internal provisions. While failing to prevail in her actions, there is no evidence that her actions were of such a nature so as to lose the protection afforded by Title VII. In the instant case evidence did establish that Charging Party was heat-

> edly attacked by others in the department and those individuals were to subsequently assume responsibility for determining Charging Party's salary . . .
>
> Evidence establishes that from 1977 to the present there has been a marked decline in Charging Party's relative standing in the department on the basis of salary. The Commission's investigation disclosed that there appeared to be a manipulation of Charging Party's ratings as well as a general undervaluing of her accomplishments. Accordingly, there is a reasonable basis to credit the sex and retaliation allegation regarding salary . . .
>
> There was evidence establishing a reasonable cause to credit the retaliation allegation on the harassment . . . .

Petitioner's complaints against the University and individual defendants alleged discrimination on the grounds of sex in salary, verbal abuse and harassment at departmental meetings and otherwise, causing loss of Fulbright research grants, and slandering and demeaning her to students, faculty and others.

Disqualification of Judge

Throughout the pendency of petitioner's action before Judge Rogers, he failed to disclose to her his close personal ties to respondent University of Kansas. These included having been a Director of its Alumni Association while her charges were before the EEOC, having been President of the Board of Governors of the University's Law School while petitioner's case was before him, and having been a Director of the University's Endowment

Association. He had been awarded a prize by the University's Law School in 1979.

Petitioner's first counsel withdrew on June 1, 1983, after irregularities. While acting pro se, petitioner first learned that Judge Rogers had been a Director of the University's Alumni Association in 1981 and was thereby subject to disqualification. Promptly, in October 1983, petitioner filed a motion for disqualification pursuant to 28 U.S.C. § 455(a) and (b).

Judge Rogers orally denied petitioner's motion on July 23, 1984, during a telephone call initiated by respondents' counsel. See pp. A96, A97, *infra*. In an order dated August 30, 1984, Judge Rogers stated:

> I do not believe that my past association with the Alumni Association demonstrates actual bias under the circumstances of this case and I do not think that a reasonable man would doubt my impartiality under these circumstances . . . I do not think my association with the Alumni Association is nearly as significant as other associations which have been found by various courts not to require recusal.

He failed to state that he had held the position of President of the Board of Governors of the Law School of the University after petitioner's case had been filed.

Petitioner learned in December 1984 that Judge Rogers had been President of the Board of Governors of the Law School. She petitioned timely for a writ of mandamus pursuant to 28 U.S.C. § 455(a) and § 455(b)(1) as well as § 144. Judge Rogers refused to recuse himself and the Court of Appeals for the Tenth Circuit dismissed her petition for mandamus on March 27, 1985, "without

prejudice to the right of petitioner to raise the issue sought to be raised in this petition by direct appeal from a final judgment."

In September 1986, a week after Judge Rogers found for respondent University of Kansas, petitioner learned that Judge Rogers was also a Director of the University's Endowment Association. See p. A136, *infra*.

Dismissal in Contravention of Petitioner's First Amendment Rights

Judge Rogers dismissed individual defendants from petitioner's suit on October 15, 1986 under circumstances which denied petitioner her First Amendment right to observe the High Holy Days of the Jewish Faith. See p. A103, *infra*. On August 10, 1984, the individual respondents filed a motion to dismiss on the ground that petitioner had not met an order filed March 5, 1984, to provide more complete and detailed answers to interrogatories. When they filed this motion, both they and the Court knew that petitioner had been unable to meet the order because, on March 9, 1984, new counsel agreed to represent her and, on March 13, 1984, took possession of her documents. Petitioner's documents remained in the possession of withdrawing counsel or of counsel to whom petitioner was referred almost continuously until July 11, 1984. See pp. A113-A117, *infra*. Respondents began deposing petitioner a week after she retrieved her documents and they continued to depose her after they filed their motion to dismiss.

On September 18, 1984, Judge Rogers held a hearing on respondents' motion during which petitioner informed

him that she is a religious Jew and that the solemn Jewish High Holy Days were approaching. Nonetheless, Judge Rogers ordered her on September 19, 1984, to supply more complete and detailed answers to five of the interrogatories within but ten days. On September 21, before receipt of this order, petitioner filed a motion which stated with specificity that the Jewish High Holy Day period was scheduled to begin on September 26, 1984, and continue until October 7, 1984. See p. A99, *infra*. On September 24, 1984, upon receipt of the Court's order, petitioner immediately moved for a ten day extension to meet it on the ground that Rosh HaShana, the Jewish New Year, fell on September 26 through September 28, 1984, followed by Yom Kippur, the Day of Atonement, on October 6, 1984, and that her religious obligations on those days and the Sabbath between them prohibited her from all work during those four days.

Petitioner also immediately began complying with the order and complied within ten days plus the four days covered by the Jewish High Holy Days. She also filed Certificates of Compliance with the District Court. See pp. A105-A109, *infra*.

Nonetheless, on October 15, 1984, Judge Rogers denied petitioner's motion for an extension and dismissed her claims against the individual defendants for "willful failure to cooperate in the discovery process." See p. A28, *infra*. Judge Rogers not only denied a petition for reconsideration but also refused to certify his order of October 15, 1984, for appeal. See pp. A101, A31-A33, *infra*. Petitioner timely filed an affidavit of prejudice pursuant to 28 U.S.C. § 144.

Petitioner filed her second suit pro se because the District Court, on March 6, 1984, had denied her motion to amend pursuant to F.R.Civ.P. 15(a). On November 25, 1985, the District Court (Saffels, D.J.) found respondents' unsupported allegation that petitioner suffers "mental infirmities" to be "perfectly proper." See pp. A151, A158, *infra*.

Respondents in the second suit moved for summary judgment on October 27, 1987. Judge Saffels, denying petitioner's motion for a 30 day extension, ordered her to respond within ten days. She complied. On January 6, 1987, he granted summary judgment, under the doctrine of res judicata and collateral estoppel, on petitioner's claims under § 1983. He asserted that the nonmoving party must go beyond the pleadings, although petitioner had filed voluminous evidence, including sworn statements, as exhibits to pleadings. He granted summary judgment on petitioner's claim under Title IX, denying a private right of action, and ordered her to respond within fifteen days on her remaining claims. After she did so, he granted summary judgment on all of them and also denied her motion for disqualification on the ground of pervasive bias and prejudice. See pp. A152, A153, *infra*. He subsequently granted respondents' counsel attorneys' fees. See p. A90, *infra* and p. A148, *infra*.

In her appeals of the District Court's grant of summary judgment and award of attorneys' fees, petitioner invoked F.R.Civ.P. 60(b) for relief from all the judgments of the District Court.

REASONS FOR GRANTING THE WRIT

I.

The decision of the Tenth Circuit not to disqualify the District Judge conflicts with (a) decisions of this Court, and (b) 28 U.S.C. § 455.

In *Liljeberg v. Health Services Corp.*, 108 S.Ct. 2194, 100 L.Ed.2d 855, this Court held at 866:

> . . . the Court of Appeals for the Fifth Circuit concluded that a violation of § 455(a) is established when a reasonable person, knowing the relevant facts, would expect that a justice, judge, or magistrate knew of circumstances creating an appearance of partiality . . . We granted certiorari to consider its construction of § 455(a) as well as its remedial decision. 480 U.S. ....., 94 L.Ed.2d 684, 107 S.Ct. 1368. We now affirm.

In their dissenting opinion, Chief Justice Rehnquist, joined by Justice White and Justice Scalia, further stated at 879:

> Subsection (a) was drafted to replace the subjective standard of the old disqualification statute with an objective test. Congress hoped that this objective standard would promote public confidence in the impartiality of the judicial process by instructing a judge, when confronted with circumstances in which his impartiality could reasonably be doubted, to disqualify himself . . .

This Court decided *Liljeberg* on June 17, 1988, when this case still was pending before the Tenth Circuit.

The conflict between *Liljeberg* and this case could not be more complete. It is indisputable that Judge Rogers knew he had been President of the Board of Governors of the Law School of respondent University of Kansas during the pendency of this case before him when he refused to recuse himself because of having been a Director of respondent University's Alumni Association. Nonetheless, he failed to seek waiver "preceded by a full disclosure on the record of the basis for disqualification" pursuant to § 455(e).

Judge Rogers also knew that he had been a Director of respondent University's Endowment Association when he refused to recuse himself. A substantial part of respondent University's income—e.g., nearly $13.9 million during 1984-85 and $15.2 million during 1986-87—is contributed through its Endowment Association. In *Ward v. Village of Monroeville, Ohio,* 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), this Court held that it is not necessary for a judge to share directly in a level of contribution to have a direct, personal, substantial pecuniary interest in a case before him. In *Gibson v. Berryhill,* 411 U.S. 564, 93 S.Ct. 1698, 36 L.Ed.2d 488 (1973), this Court held that the disqualifying financial stake need not be "direct or positive." As the Seventh Circuit held in *United Church, Etc. v. Medical Center Com'n,* 689 F.2d 693, 700 (1982),

> . . . the principle of disqualification applies even if the pecuniary interest is only an indirect outgrowth of a public official's desire to protect official funds.

Judge Rogers' refusal to disqualify himself deprived petitioner of her right to due process under the standard

of *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). This Court stated in *Murchison*:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases in which he has an interest in the outcome.

In upholding Judge Rogers' refusal to have disqualified himself, the Tenth Circuit has created a precedent directly at odds with this Court's rulings as well as with 28 U.S.C. § 455.

II.

The decision of the Tenth Circuit not to disqualify the District Judge conflicts with (a) 28 U.S.C. § 455 by reading into that statute a timeliness requirement which Congress deliberately failed to include, (b) decisions in other Circuits, and (c) this Court's decision in Liljeberg, supra.

This case presents an important issue of statutory construction of 28 U.S.C. § 455 concerning which there is a conflict among the Circuits (which does not appear to have been resolved by *Liljeberg, supra*). The issue is whether courts can impose a timeliness requirement on a motion for judicial disqualification pursuant to this statute. The Tenth Circuit has held in this case that such a motion "must be timely filed." See p. A9, *infra*. It has thereby claimed as mandatory a requirement that was specifically disclaimed by Congress in the 1974

amendment to 28 U.S.C. § 455. The legislative history of that act makes it clear that there is no particular procedure which must be followed by a party in order to obtain judicial disqualification and that Congress deliberately disregarded attempts to apply requirements such as timeliness. *See Roberts v. Bailar*, 625 F.2d 125, 128 (6th Cir. 1980); *See* also *Delesdernier v. Porterie*, 666 F.2d 116, 120-121 (5th Cir. 1982).

Other circuits have recognized the absence of procedural requirements in this statute. The Seventh Circuit has held that there are no time limits within which disqualification must be sought. *See SCA Services, Inc. v. Morgan*, 557 F.2d 110, 117 (7th Cir. 1977). The Ninth Circuit has also held that § 455 sets forth no procedural requirements. *See United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980). Of the decisions in cases in four circuits other than its own cited by the Tenth Circuit in support of its holding on timeliness, those from two other circuits recognize that § 455 has no timeliness requirement. *See In re International Business Machines Corp.*, 618 F.2d 923, 932 (2nd Cir. 1980) and *Oglala Sioux Tribe v. Homestake Mining Co.*, 722 F.2d 1407, 1414 (8th Cir. 1983).

Despite their recognition of the absence of a timeliness requirement in the statute, some circuits have chosen to insert one or to see one as implicit. *See In re International Business Machines Corp., supra; Oglala Sioux Tribe v. Homestake Min. Co., supra.* Other circuits have ignored the disinclination of Congress to include a timeliness requirement in the statute and have chosen to treat § 455 as if it were identical to § 144 which has a timeliness requirement. *See United States v. Slay*, 714 F.2d 1093, 1094 (11th Cir. 1983).

In two prior cases in the two years immediately preceding this one, *Franks v. Nimmo*, 796 F.2d 1230, 1234 (1986) and *Hinman v. Rogers*, 831 F.2d 937, 939 (1987), the Tenth Circuit held that § 455 contains no procedural hurdles. This gives rise to the inference that the holding in this case of a procedural requirement of timeliness has the purpose of avoiding ruling on the merits of petitioner's motions pursuant to § 455. This inference is supported by the Tenth Circuit's denial of petitioner's petition for rehearing in the light of this Court's decision in *Liljeberg, supra*. For if timeliness were a requirement pursuant to § 455, petitioner met it, since she did timely file her motion for disqualification on the basis of the district court's position as director of the Alumni Association of respondent University of Kansas. She filed this motion directly after learning of this relationship of the District Court Judge to the University.

In the cases where circuit courts have read a timeliness requirement into § 455, there has been disarray over the standard or criterion to be applied. For example, the Fifth Circuit and the Eleventh Circuit apply the test of when a party seeking disqualification receives knowledge of the facts appearing to warrant disqualification. *See Health Services Acquisition Corp. v. Liljeberg*, 796 F.2d 796 (5th Cir. 1986), *United States v. Slay, supra*. The Tenth Circuit applies the test of when the case is filed. *See Singer v. Wadman*, 745 F.2d 606, 608 (10th Cir. 1984).

The disarray in the circuits on both timeliness and the proper interpretation of the statute calls for this Court's consideration.

III.

The decision of the Tenth Circuit to authorize dismissal of individual defendants pursuant to F.R.Civ.P. 37(b) after the plaintiff in good faith made diligent efforts to comply with the District Court's order to supplement interrogatories within ten days and succeeded in doing so within ten calendar days after receiving the Court's order plus four days of religious observance including the High Holy Days of the Jewish faith conflicts with (a) a legitimate claim to the free exercise of religion, and (b) decisions of this Court.

Observance of the Jewish High Holy Days of Rosh HaShana and Yom Kippur, with their prohibition on all work and their dedication to prayer and repentance, is an integral part of Judaism. Any governmental action which can restrict a practicing Jew's observance of the High Holy Days and a Sabbath between them necessarily creates a burden on the exercise of a Jewish person's religion.

Petitioner fully met the District Court's order to provide complete and detailed answers to five interrogatories within ten days, as ordered, under the provisions of F.R.Civ.P. 6(a) and (e) as of 1984, absent the four days she observed Rosh HaShana, Yom Kippur and the Sabbath between them.

The conflict between this Court's decisions in *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) and in *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) and the instant case could not be more complete. In *Sherbert v. Verner*, the Supreme Court held at 967 that:

> Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation of religious freedom; no showing merely of a rational relationship to some colorable state interest will suffice.

In *Yoder*, this Court held at 207:

> The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.

Nonetheless, in his order of October 15, 1984, dismissing individual defendants, Judge Rogers failed to meet this standard. See p. A28, *infra*. Instead, he stated:

> The Court does not find that plaintiff has shown good cause for the extension of the deadline established in our order of September 19, 1984.

The District Court further stated:

> Plaintiff's actions can only be characterized as a willful failure to cooperate in the discovery process.

To characterize petitioner's religious observance as a willful failure to cooperate in the discovery process strikes at the legitimacy of Jewish religious practice without even an attempt to assert an overriding interest.

In authorizing the District Court's dismissal of individual defendants pursuant to Rule 37(b) as a final order, the Tenth Circuit not only struck at the legitimacy of Jewish religious practice; it also is in direct conflict with the decisions of this Court in *Societe Internationale v. Rogers*, 357 U.S. 197, 78 S.Ct. 1097, 2 L.Ed.2d 1255 (1958)

and *National Hockey League v. Metropolitan Hockey Club,* 427 U.S. 639, 640, 642, 96 S.Ct. 2778, 2782, 49 L.Ed.2d 747, 751 (1975). *Societe Internationale* held that Rule 37

> . . . should not be construed to authorize dismissal of a complaint because of the plaintiff's noncompliance with a pretrial production order when it has been established that failure to comply has been due to inability, and not to willfulness, bad faith, or any fault of the plaintiff.

National Hockey League upheld this standard.

The record in this case in District Court establishes that petitioner was unable to comply with the District Court's order of March 5, 1984, compelling further answers to respondents' interrogatories because, on March 9, 1984, petitioner retained counsel who took possession of the documents necessary to answer respondents' interrogatories and failed to allow petitioner to recover them until May 25, 1984. The record establishes that counsel whom petitioner sought to have represent her took possession of her documents on June 1, 1984, and held them until July 11, 1984. The record establishes that petitioner in good faith gave the information requested in respondents' interrogatories during deposition duces tecum between July 18, 1984 and August 16, 1984. See pp. A111-A118, *infra.* The record establishes that there has been no willfulness, bad faith, or any fault of petitioner.

The importance of the issues presented by the Tenth Circuit's authorization as a final order of the District Court's dismissal of individual defendants pursuant to Rule 37(b) extends beyond the parties and beyond the Tenth Circuit. The issues presented are important to the administration of justice.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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